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SENATE BILL 48

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO THE CHILDREN'S CODE; PROVIDING TRANSITIONAL SUPPORT FOR FOSTER YOUTH WHILE IN THE CUSTODY OF THE STATE; EXPANDING DEFINITIONS; AMENDING AND ENACTING SECTIONS OF THE ABUSE AND NEGLECT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96, as amended) is amended to read:

"32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect Act:

A. "abandonment" includes instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of fourteen days; or

(2) left the child with others, including the

1 other parent or an agency, without provision for support and
2 without communication for a period of:

3 (a) three months if the child was under
4 six years of age at the commencement of the three-month period;
5 or

6 (b) six months if the child was over six
7 years of age at the commencement of the six-month period;

8 B. "abused child" means a child:

9 (1) who has suffered or who is at risk of
10 suffering serious harm because of the action or inaction of the
11 child's parent, guardian or custodian;

12 (2) who has suffered physical abuse, emotional
13 abuse or psychological abuse inflicted or caused by the child's
14 parent, guardian or custodian;

15 (3) who has suffered sexual abuse or sexual
16 exploitation inflicted by the child's parent, guardian or
17 custodian;

18 (4) whose parent, guardian or custodian has
19 knowingly, intentionally or negligently placed the child in a
20 situation that may endanger the child's life or health; or

21 (5) whose parent, guardian or custodian has
22 knowingly or intentionally tortured, cruelly confined or
23 cruelly punished the child;

24 C. "aggravated circumstances" [~~include~~] includes
25 those circumstances in which the parent, guardian or custodian

1 has:

2 (1) attempted, conspired to cause or caused
3 great bodily harm to the child or great bodily harm or death to
4 the child's sibling;

5 (2) attempted, conspired to cause or caused
6 great bodily harm or death to another parent, guardian or
7 custodian of the child;

8 (3) attempted, conspired to subject or has
9 subjected the child to torture, chronic abuse or sexual abuse;
10 or

11 (4) had [~~his~~] parental rights over a sibling
12 of the child terminated involuntarily;

13 D. "great bodily harm" means an injury to a person
14 that creates a high probability of death, that causes serious
15 disfigurement or that results in permanent or protracted loss
16 or impairment of the function of [~~any~~] a member or organ of the
17 body;

18 E. "neglected child" means a child:

19 (1) who has been abandoned by the child's
20 parent, guardian or custodian;

21 (2) who is without proper parental care and
22 control or subsistence, education, medical or other care or
23 control necessary for the child's well-being because of the
24 faults or habits of the child's parent, guardian or custodian
25 or the failure or refusal of the parent, guardian or custodian,

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1 when able to do so, to provide them;

2 (3) who has been physically or sexually
3 abused, when the child's parent, guardian or custodian knew or
4 should have known of the abuse and failed to take reasonable
5 steps to protect the child from further harm;

6 (4) whose parent, guardian or custodian is
7 unable to discharge ~~[his]~~ that person's responsibilities to and
8 for the child because of incarceration, hospitalization or
9 physical or mental disorder or incapacity; or

10 (5) who has been placed for care or adoption
11 in violation of the law; provided that nothing in the
12 Children's Code shall be construed to imply that a child who is
13 being provided with treatment by spiritual means alone through
14 prayer, in accordance with the tenets and practices of a
15 recognized church or religious denomination, by a duly
16 accredited practitioner thereof is for that reason alone a
17 neglected child within the meaning of the Children's Code; and
18 further provided that no child shall be denied the protection
19 afforded to all children under the Children's Code;

20 F. "physical abuse" includes ~~[but is not limited~~
21 ~~to]~~ any case in which the child exhibits evidence of skin
22 bruising, bleeding, malnutrition, failure to thrive, burns,
23 fracture of any bone, subdural hematoma, soft tissue swelling
24 or death and:

25 (1) there is not a justifiable explanation for

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1 the condition or death;

2 (2) the explanation given for the condition is
3 at variance with the degree or nature of the condition;

4 (3) the explanation given for the death is at
5 variance with the nature of the death; or

6 (4) circumstances indicate that the condition
7 or death may not be the product of an accidental occurrence;

8 G. "sexual abuse" includes [~~but is not limited to~~]
9 criminal sexual contact, incest [~~or~~] and criminal sexual
10 penetration, as those acts are defined by state law; [~~and~~]

11 H. "sexual exploitation" includes [~~but is not~~
12 ~~limited to~~]:

13 (1) allowing, permitting or encouraging a
14 child to engage in prostitution;

15 (2) allowing, permitting, encouraging or
16 engaging a child in obscene or pornographic photographing; [~~or~~]
17 and

18 (3) filming or depicting a child for obscene
19 or pornographic commercial purposes, as those acts are defined
20 by state law;

21 I. "transition living plan" means an individualized
22 written plan that is reasonably calculated to provide adequate
23 support and maintenance to a person, based on the unique needs
24 of the person, and that must be reasonably calculated to
25 increase independent living skills that will enable the person

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1 to be as self-sufficient as possible; and

2 J. "transitional living services" means services
3 that help a person arrange for adult living, including gaining
4 access to food, clothing, housing, vocational, educational,
5 medical and mental health services. "Transitional living
6 services" includes:

7 (1) identification of programs and services
8 appropriate for the person's needs;

9 (2) help in obtaining the identified programs
10 or services;

11 (3) coordination of delivery of services when
12 multiple providers or programs are involved in the provision of
13 care;

14 (4) reassessment to ensure that the services
15 obtained are necessary and appropriate in meeting the person's
16 needs; and

17 (5) determination of whether additional
18 services are warranted."

19 Section 2. Section 32A-4-25.1 NMSA 1978 (being Laws
20 1997, Chapter 34, Section 8, as amended) is amended to read:

21 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW
22 HEARINGS.--

23 A. A permanency hearing shall be commenced within
24 six months of the initial judicial review of a child's
25 dispositional order or within twelve months of a child entering

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1 foster care pursuant to Subsection E of this section, whichever
2 occurs first. Prior to the initial permanency hearing, all
3 parties to the hearing shall attend a mandatory meeting and
4 attempt to settle issues attendant to the permanency hearing
5 and develop a proposed treatment plan that serves the child's
6 best interest. Prior to the initial permanency hearing, the
7 department shall submit a progress report regarding the child
8 to the local substitute care review board for that judicial
9 district. The local substitute care review board may review
10 the child's dispositional order, any continuation of that order
11 and the department's progress report and report its findings
12 and recommendations to the court.

13 B. At the permanency hearing, all parties shall
14 have the opportunity to present evidence and to cross-examine
15 witnesses. At the conclusion of the permanency hearing, the
16 court shall order one of the following permanency plans for the
17 child:

- 18 (1) reunification;
- 19 (2) placement for adoption after the parents'
20 rights have been relinquished or terminated or after a motion
21 has been filed to terminate parental rights;
- 22 (3) placement with a person who will be the
23 child's permanent guardian;
- 24 (4) placement in the legal custody of the
25 department with the child placed in the home of a fit and

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1 willing relative; or

2 (5) placement in the legal custody of the
3 department under a planned permanent living arrangement,
4 provided that there is substantial evidence that none of the
5 above plans is appropriate for the child.

6 C. If the court adopts a permanency plan of
7 reunification, the court shall adopt a plan for transitioning
8 the child home and schedule a permanency review hearing within
9 three months. If the child is reunified, the subsequent
10 hearing may be vacated.

11 D. At the permanency review hearing, all parties
12 and the child's guardian ad litem or attorney shall have the
13 opportunity to present evidence and cross-examine witnesses.
14 Based on the evidence, the court shall:

15 (1) change the plan from reunification to one
16 of the alternative plans provided in Subsection B of this
17 section;

18 (2) dismiss the case and return custody of the
19 child to ~~[his]~~ the child's parent, guardian or custodian; or

20 (3) return the child to the custody of ~~[his]~~
21 the child's parent, guardian or custodian, subject to any
22 conditions or limitations as the court may prescribe, including
23 protective supervision of the child by the department and
24 continuation of the treatment plan for not more than six
25 months, after which the case shall be dismissed. The

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1 department may seek removal of a child from the home by
2 obtaining an order in the pending case or by seeking emergency
3 removal under Section 32A-4-6 NMSA 1978 during the period of
4 protective supervision if the child's best interest requires
5 such action. When a child is removed in this situation, a
6 permanency hearing shall be scheduled within thirty days of the
7 child coming back into the department's legal custody.

8 E. The court shall hold a permanency hearing and
9 adopt a permanency plan for a child within twelve months of the
10 child entering foster care. For purposes of this section, a
11 child shall be considered to have entered foster care on the
12 earlier of:

13 (1) the date of the first judicial finding
14 that the child has been abused or neglected; or

15 (2) sixty days after the date on which the
16 child was removed from the home.

17 F. The court shall hold permanency hearings every
18 twelve months when a child is in the legal custody of the
19 department.

20 G. Prior to the first permanency hearing after the
21 child turns fourteen years of age, the department shall meet
22 with the child, the child's surrogate parent, appointed
23 pursuant to the federal Individuals With Disabilities Education
24 Act, or other educational decision-maker recognized by the
25 child's school district, the child's court attorney and staff

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1 from the child's school to develop an educational next-step
2 plan. The educational plan shall be based on the individual
3 needs of the child and must be reasonably calculated to support
4 the child's identified post-secondary goals, including
5 vocational goals. The educational plan shall be reviewed at
6 the first permanency hearing after the child turns fourteen
7 years of age. Based on its review, the court may either adopt
8 the educational plan or may order the department to convene
9 another planning meeting to revise the educational plan. The
10 educational plan will be reviewed at every subsequent
11 permanency hearing.

12 H. At the permanency hearing prior to the child
13 turning seventeen years of age, the court shall inform the
14 child of the child's eligibility for transitional living
15 services and for a transition living plan.

16 ~~[G-]~~ I. The children's court attorney shall give
17 notice to all parties, the child's guardian ad litem, the
18 child's CASA, a contractor administering the local substitute
19 care review board and the child's foster parent or substitute
20 care provider of the time, place and purpose of any permanency
21 hearing or permanency review hearing held pursuant to this
22 section.

23 ~~[H-]~~ J. The rules of evidence shall not apply to
24 permanency hearings. The court may admit testimony by any
25 person given notice of the permanency hearing who has

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1 information about the status of the child or the status of the
2 treatment plan. All testimony shall be subject to
3 cross-examination."

4 Section 3. A new section of the Abuse and Neglect Act is
5 enacted to read:

6 "[NEW MATERIAL] TRANSITION SERVICES.--

7 A. Prior to a child reaching seventeen years of
8 age, the department shall meet with the child, the child's
9 attorney and other individuals of the child's choosing to
10 develop a transition living plan. In developing the plan, the
11 department shall assist the child to identify and plan how to
12 meet the child's needs for services and supports after the
13 child leaves state custody, including the areas of:

- 14 (1) housing;
- 15 (2) education;
- 16 (3) employment;
- 17 (4) health; and
- 18 (5) mental health.

19 B. The child will be assisted to direct the process
20 of developing a transition living plan. The transition living
21 plan must be reasonably calculated to provide adequate support
22 and maintenance for the child based upon the unique needs for
23 the child and must be reasonably calculated to increase
24 independent living skills that will enable the child to be as
25 self-sufficient as possible.

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1 C. The department shall draft a proposed transition
2 living plan based upon the child's stated preferences. The
3 department will provide the proposed transition living plan to
4 the child and the child's attorney within ten days of the
5 meeting to develop the plan. If the child, after opportunity
6 for consultation with the child's attorney, agrees in writing
7 to the plan by signing the plan, the department will file the
8 child's plan with the court as part of the child's proposed
9 transition living plan.

10 D. In the event the child wishes to contest all or
11 part of the plan proposed by the department, the child may
12 either request a transition living plan review hearing or raise
13 the child's concern with the plan at the next regularly
14 scheduled judicial review hearing. At the conclusion of the
15 hearing regarding the transition living plan, the court shall,
16 based on its findings, order the implementation of a transition
17 living plan. The court may order the transition living plan
18 proposed by the department or make additional modifications of
19 the transition living plan that the court determines
20 appropriate to provide for the support and maintenance needed
21 by the child.

22 E. The court will review the department's
23 implementation of the transition living plan approved by the
24 court, whether by agreement of the parties or after a contested
25 hearing, at every subsequent judicial review hearing. The

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1 child may also request a special hearing for enforcement or
2 modification of the plan.

3 F. At least ninety days before the child reaches
4 eighteen years of age, the department will convene a planning
5 meeting with the child, the child's attorney and other
6 individuals of the child's choosing to review the
7 implementation of the transition living plan. Within ten days
8 of the meeting, the department will report to the court its
9 assessment of the implementation of the plan.

10 G. The court may not terminate jurisdiction over a
11 child who has been in the custody of the department, either by
12 emancipation or the child reaching the age of majority, until
13 the department:

14 (1) ensures that the child is present in court
15 for a review of the implementation of the transition living
16 plan, unless the child decides not to appear in court. If the
17 child does not appear, the department shall document its
18 efforts to locate the child and to provide the child
19 transportation to the hearing; and

20 (2) verifies in writing that the following
21 information, documents and services have been provided to the
22 child:

23 (a) written information concerning the
24 child's case, including the child's family history, the child's
25 placement history, the whereabouts of any sibling under the

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1 jurisdiction of the juvenile court, unless the court determines
2 that the sibling contact would jeopardize the safety or welfare
3 of the sibling, instructions on how to access the documents the
4 child is entitled to inspect and the date on which the
5 jurisdiction of the court would be terminated;

6 (b) if applicable, the child's social
7 security card, certified birth certificate, health and
8 education summary, state-issued identification card, death
9 certificate of the parent and proof of citizenship or
10 residence;

11 (c) assistance in obtaining medicaid,
12 unless ineligible; assistance in obtaining other health
13 insurance; assistance in obtaining all other public benefits to
14 which the child, as an adult, may be entitled; referral to
15 transitional housing, if available; or assistance in securing
16 other housing and assistance in obtaining employment or other
17 financial support;

18 (d) assistance in applying for admission
19 to a post-secondary institution, vocational training program or
20 other educational institution and assistance in obtaining
21 appropriate financial aid;

22 (e) assistance in maintaining
23 relationships with individuals who are important to the child
24 who has been in an out-of-home placement in a group home for
25 six months or longer from the date the child entered foster

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1 care, based on the child's best interests; and

2 (f) assistance in arranging for a
3 guardianship or limited guardianship if the child is
4 incapacitated due to disability to the degree that the child
5 cannot adequately give or withhold informed consent for
6 treatment or other important decisions regarding the child's
7 health or safety.

8 H. If the court finds that the department has not
9 met all the requirements of Paragraph (2) of Subsection G of
10 this section, and that termination of jurisdiction could be
11 harmful to the best interests of the child, the court shall
12 continue to exercise its jurisdiction until it finds the
13 department has met all the requirements of Paragraph (2) of
14 Subsection G of this section, unless the child knowingly and
15 voluntarily informs the court that the child waives the child's
16 right to implementation of the transition living plan and
17 elects to have the case dismissed.

18 I. The children's court division of the district
19 court shall develop and adopt the standards and appropriate
20 forms necessary to implement this section."